

SANCTIONED ATTORNEYS

PAMELA K. ALLEN

Bar No. 010135; File No. 06-0010

Supreme Court No. SB-07-0103-D

By Arizona Supreme Court judgment and order dated June 29, 2007, Pamela K. Allen, P.O. Box 10990, Casa Grande, Ariz. 85230, a member of the State Bar, was suspended for six months and one day and placed on probation for two years upon reinstatement. The terms of probation will include participation in the State Bar's Trust Account Ethics Enhancement Program and Law Office Management Assistance Program. Ms. Allen also was assessed the costs and expenses of the disciplinary proceedings.

The State Bar received an insufficient funds notice regarding Ms. Allen's trust account resulting in an investigation by the State Bar's staff examiner. The investigation disclosed that Ms. Allen had failed to verify the collection of funds before drawing disbursements from the trust account; failed to maintain individual client ledgers, a general ledger and an administrative funds ledger; failed to record all transactions promptly and completely; failed to maintain duplicate deposit slips; and failed to conduct monthly three-way reconciliations.

Ms. Allen failed to respond and cooperate in the State Bar's investigation or to answer or otherwise

defend in the formal disciplinary proceeding. The conduct alleged in the complaint was deemed admitted by default pursuant to Rule 57(d), ARIZ.R.S.Ct.

Five aggravating factors were found: a pattern of misconduct, multiple offenses, bad-faith obstruction of the disciplinary proceedings by intentionally failing to comply with rules of orders of the disciplinary agency, refusal to acknowledge wrongful nature of conduct, and substantial experience in the practice of law.

One mitigating factor was found: absence of a prior disciplinary record.

Ms. Allen violated Rule 42, ARIZ.R.S.Ct., ERs 1.15 and 8.1(b), and Rules 43(a) and (b), 44 and 53(d) and (f), ARIZ.R.S.Ct.

MATTHEW C. BOWER

Bar No. 020385; File Nos. 05-1655, 05-1741, 05-2149, 06-0100, 06-0104, 06-0384

Supreme Court No. SB-07-0054-D

By Arizona Supreme Court judgment and order dated May 22, 2007, Matthew C. Bower, 4727 E. Bell Rd., Suite 45, PMB 206, Phoenix, Ariz. 85032, a member of the State Bar, was disbarred. He was ordered to pay restitution of \$1,500 to the complainants in count one and assessed the costs and expenses of the disciplinary proceedings.

Mr. Bower committed professional misconduct in six separate

cases. In count one, a real-property matter, Mr. Bower accepted an advanced fee and original documents from clients and then abandoned the case. He failed to return client phone calls, the unearned fee and the original documents upon request of the clients. In count two, a personal injury matter, Mr. Bower abandoned the case.

In count three Mr. Bower was convicted, pursuant to a plea of guilty, of Interference with Judicial Proceedings, a class 1 misdemeanor, in violation of A.R.S. §13-2810.A.2, and §13-3601.H, in CR2005-15511, Glendale City Court. He then failed to appear at a treatment court status conference and a warrant for probation violation was issued against him. In count four, a civil-litigation matter, Mr. Bower abandoned the matter after filing a motion for summary judgment. The clients later learned that the motion had been denied and judgment for approximately \$5,000 in attorneys' fees had been entered against them. Respondent failed to return client phone calls and failed to return the client file upon request.

In count five, Mr. Bower accepted a retainer from clients and then abandoned the case. He failed to return client phone calls and the unearned retainer. In count six, Mr. Bower sent voluminous facsimiles that contained offensive language to the attorney representing his wife in their divorce pro-

ceedings. Mr. Bower was charged with two counts of harassment, class 1 misdemeanors in violation of A.R.S. §13-2921.A, in CR2005-9037793, Phoenix City Court. Mr. Bower then failed to appear at a pretrial deposition conference.

In all counts Mr. Bower failed to respond and cooperate in the State Bar's investigation or to answer or otherwise defend in the formal disciplinary proceeding. The conduct alleged in the complaint was deemed admitted by default pursuant to Rule 57(d), ARIZ.R.S.Ct.

Three aggravating factors were found: pattern of misconduct, multiple offenses, and illegal conduct.

Three mitigating factors were found: absence of a prior disciplinary record, personal or emotional problems and inexperience in the practice of law.

Mr. Bower violated Rule 42, ARIZ.R.S.Ct., ERs 1.2, 1.3, 1.4, 1.5, 1.15, 1.16, 3.4(c), 4.4(a), 8.1(b) and 8.4(b), (c) and (d), and Rules 41(g) and 53(c) and (f), ARIZ.R.S.Ct.

BRADFORD T. BROWN

Bar No. 009034; File No. 05-2227

Supreme Court No. SB-07-0061-D

By Arizona Supreme Court judgment and order dated May 22, 2007, Bradford T. Brown, 201 S. 2nd Ave., Yuma, Ariz. 85364-2213, a suspended member of the State Bar, was suspended for six months and one day and assessed

the costs and expenses of the disciplinary proceedings.

In a criminal matter, Mr. Brown failed to adequately communicate with a client. He also failed to respond and cooperate in the State Bar's investigation or to answer or otherwise defend in the formal disciplinary proceeding. The conduct alleged in the complaint was deemed admitted by default pursuant to Rule 57(d), ARIZ.R.S.Ct.

Four aggravating factors were found: prior disciplinary offenses, a pattern of misconduct, bad-faith obstruction of the disciplinary proceedings and substantial experience in the practice of law. No mitigating factors were found.

Mr. Brown violated Rule 42, ARIZ.R.S.Ct., ER 1.4, and Rule 53(d) and (f), ARIZ.R.S.Ct.

TROY L. BROWN

Bar No. 016400; File No. 05-0098

Supreme Court No. SB-07-0011-D

By Arizona Supreme Court judgment and order dated May 22, 2007, Troy L. Brown, 1757 E. Baseline Rd., Suite 130, Gilbert, Ariz. 85233, a member of the State Bar, was suspended for five months and placed on probation for two years. The terms of the probation include participating in the State Bar's Law Officer Management Assistance Program with an approved practice monitor. Mr. Brown was ordered to pay restitution in the amount of \$4,923.64, plus 10 percent interest from Dec. 10, 2004, until paid, and the costs and expenses of the disciplinary proceedings.

In a divorce matter, Mr. Brown accepted furniture in lieu of cash for his services without transmitting the terms of the transaction to the client in writing, advising the client to obtain independent legal advice in writing, and obtaining the client's informed consent to the transaction in writing. He removed disputed funds in his trust account without the client's permission and contrary to the client's direction not to remove the funds.

Upon investigation of Mr. Brown's trust account records, it was found that he failed to properly safeguard client's funds; failed to exercise due professional care in the maintenance of his client trust account; failed to record all transactions promptly and completely; failed to conduct monthly reconciliations of his trust account register, client ledgers and bank statements; and failed to maintain complete trust account records. During the investigation and formal proceedings Mr. Brown failed to furnish requested trust account records to the State Bar.

Three aggravating factors were found: dishonest or selfish motive, refusal to acknowledge wrongful nature of conduct and substantial experience in the practice of law. One mitigating factor was found: absence of a prior disciplinary record.

Mr. Brown violated Rule 42, ARIZ.R.S.Ct.,

ERs 1.8(a) and 1.15(a) and (c), and Rules 43(a) and (d), and 53(f), ARIZ.R.S.CT.

JEROLD A. CARTIN

Bar No. 002081; File No. 05-0252

Supreme Court No. SB-07-0058-D

By Arizona Supreme Court judgment and order dated April 10, 2007, Jerold A. Cartin, 40 N. Swan Rd., Suite 203, Tucson, Ariz. 85711, a member of the State Bar, was censured and placed on probation for one year. The terms of the probation include participating in the State Bar's Law Trust Account Ethics Enhancement Program and submitting to quarterly reviews of his trust account management procedures by the State Bar's staff examiner. Mr. Cartin was assessed the costs and expenses of the disciplinary proceedings of \$1,952.75, together with interest at the legal rate.

Mr. Cartin presented a check from his client trust account in payment to the State Bar of a late filing fee of his mandatory continuing legal education affidavit for 2004. Pursuant to State Bar policy, Mr. Cartin's check was returned to him and a copy was referred to the State Bar's Lawyer Regulation Department. Upon investigation it was found that Mr. Cartin failed to properly safeguard clients' funds; failed to hold property of clients separate from his own property; failed to exercise due professional care in the maintenance of his client trust accounts; failed to maintain proper internal controls within his office to adequately safeguard funds on deposit in the trust account; failed to record all transactions promptly and completely; failed to maintain an account ledger or the equivalent for each client, person or entity for whom monies were received in trust; failed to conduct monthly reconciliations of his trust account register, client ledgers and bank statements; and failed to retain all trust account statements, cancelled pre-numbered checks, or other evidence of disbursements, duplicate deposit slips, clients ledgers, trust account general ledgers and reports to the clients.

Three aggravating factors were found: a pattern of misconduct, multiple offenses and substantial experience in the practice of law.

Six mitigating factors were found: absence of a prior discipli-

nary record, absence of a dishonest or selfish motive, timely good-faith effort to make restitution to rectify consequences of misconduct, full and free disclosure to disciplinary board or cooperative attitude toward proceedings, character or reputation and remorse.

Mr. Cartin violated Rule 42, ARIZ.R.S.CT., ER 1.15(a), and Rules 43 and 44, ARIZ.R.S.CT.

WILLIAM P. CROTTS

Bar No. 002783; File No. 06-1731

Supreme Court No. SB-07-0032-D

By Arizona Supreme Court order dated Mar. 15, 2007, William P. Crotts, 6142 N. 13th St., Phoenix, Ariz. 85014, a suspended member of the State Bar, was disbarred by consent from the practice of law. Mr. Crotts was assessed the costs and expenses of the disciplinary proceedings in the amount of \$965.13, together with interest at the legal rate.

HEATH ORAN DOOLEY

Bar No. 014399; File Nos. 05-1377,

05-1616, 05-1660, 06-0204, 05-2088

Supreme Court No. SB-07-0051-D

By Arizona Supreme Court judgment and order dated May 22, 2007, Heath Oran Dooley, P.O. Box 24651, Tempe, Ariz. 85285, a member of the State Bar, was suspended for six months and placed on probation for two years upon reinstatement. The terms of probation include participation in the State Bar's Member Assistance Program, Law Office Management Assistance Program and Ethics Enhancement Program. He was ordered to pay restitution totaling \$5,283.04 to complainants in counts two and four and assessed the costs and expenses of the disciplinary proceedings in the amount of \$735.36, together with interest at the legal rate.

In count one, Mr. Dooley failed to adequately communicate with the client shortly after preparing and filing the complaint in a personal-injury matter. In count two, Mr. Dooley failed to return phone calls and other inquires from the client shortly after preparing and filing the complaint in a medical malpractice matter. He failed to timely comply with discovery requests resulting in the court dismissing two defendants from the case and filed a motion to

withdraw without the clients' knowledge or consent. Mr. Dooley also failed to timely comply with the client's new counsel's request for a copy of the file, failed to timely submit an accounting and failed to refund unearned fees upon request of the clients.

In exchange for Mr. Dooley's tender of admission and consent to discipline the State Bar dismissed the allegations in count three. In count four, Mr. Dooley failed to adequately communicate with the client shortly after being retained to represent the client in a Registrar of Contractor's appeal proceeding. He petitioned the court to withdraw from representation and moved to continue the hearing with out the client's knowledge or consent. Mr. Dooley failed to advise the client that the court granted the petition to withdraw and denied the hearing continuance. He also failed to refund unearned fees to the client.

In count five, a personal-injury matter, Mr. Dooley failed to timely comply with discovery requests and failed to adequately communicate with the client. He also moved to withdraw from representation without timely notifying the client. In all counts of this matter Mr. Dooley failed to respond or cooperate with the State Bar's investigation.

Four aggravating factors were found: a pattern of misconduct, multiple offenses, bad-faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency and substantial experience in the practice of law.

Three mitigating factors were found: absence of a prior disciplinary record, personal or emotional problems and absence of a dishonest or selfish motive.

Mr. Dooley violated Rule 42, ARIZ.R.S.CT., ERs 1.2, 1.3, 1.4, 1.16(d), 3.2, 8.1(b) and 8.4(d).

TIMOTHY A. FORSHEY

Bar No. 013003; File Nos. 04-0685,

04-1439, 05-0211, 05-1141

Supreme Court No. SB-07-0080-D

By Arizona Supreme Court judgment and order dated May 9, 2007, Timothy A. Forshey, 1650 N. 1st Ave., Phoenix, Ariz. 85003, a member of the State Bar, was censured and placed on probation

for two years. The terms of probation require him to participate in the State Bar's Law Office Management Assistance Program, complete the Ethics Enhancement Program, and obtain continuing legal education by viewing the State Bar CLE course titled *The Ten Deadly Sins of Conflict*. Mr. Forshey was ordered to pay restitution of \$500 to the complainant in count three and assessed the costs and expenses of the disciplinary proceedings.

In count one, a conservatorship of a minor child in a personal injury matter, Mr. Forshey engaged in a conflict of interest by failing to obtain waivers from both parental parties when representing the minor child. Count two was dismissed for insufficient evidence.

In count three, a child custody and visitation matter, Mr. Forshey failed to adequately investigate and address the factual and legal issues presented in a motion to dismiss that resulted in his client being labeled a liar in a public record in addition to having a \$2,643.50 judgment against her.

Count four comprised two separate medical-malpractice cases. In the first case Mr. Forshey failed to respond to discovery requests from opposing counsel and ignored his obligations to the court. In the second case he failed to dismiss the case voluntarily once he became aware that he lacked a good-faith basis to proceed against the defendants. The court awarded \$22,345.50 in costs and attorney fees to the defendants. Mr. Forshey paid the sanctions from his own resources.

Five aggravating factors were found: prior disciplinary offenses, pattern of misconduct, multiple offenses, refusal to acknowledge wrongful nature of conduct and substantial experience in the practice of law.

Five mitigating factors were found: absence of a dishonest or selfish motive, timely good-faith effort to make restitution or to rectify consequences of misconduct, full and free disclosure to disciplinary board or cooperative attitude toward proceedings, imposition of other penalties or sanctions and remorse.

Mr. Forshey violated Rule 42,

ARIZ.R.S.CT., ERs 1.1, 1.3, 1.7, 3.2, 3.4(d) and 8.4(d).

JAMES T. GREGORY

Bar No. 021499; File No. 05-0868

Supreme Court No. SB-07-0013-D

By Arizona Supreme Court judgment and order dated Feb. 22, 2007, James T. Gregory, 221 S. 2nd Ave, Suite 2, Yuma, Ariz. 85364, a member of the State Bar, was censured and placed on probation for one year. The terms of probation include participation in the State Bar's Trust Account Program and Trust Account Ethics Enhancement Program. Mr. Gregory also was assessed the costs and expenses of the disciplinary proceedings in the amount of \$895.50, together with interest at the legal rate.

The State Bar received an insufficient funds notice regarding Mr. Gregory's trust account resulting in an investigation by the State Bar's staff examiner. The investigation disclosed that Mr. Gregory had failed to maintain proper internal office controls to adequately safeguard client funds, record all transactions to the account promptly and completely, disburse funds with pre-numbered checks and failed to conduct monthly three-way reconciliations.

One aggravating factor was found: prior disciplinary offenses.

One mitigating factor was found: inexperience in the practice of law.

Mr. Gregory violated Rule 42, ARIZ.R.S.CT., ER 1.15(a), and Rules 43 and 44, ARIZ.R.S.CT.

GARETH C. HYNDMAN II

Bar No. 019500; File No. 05-1606, 05-1817

Supreme Court No. SB-06-0170-D

By Arizona Supreme Court judgment and order dated Feb. 9, 2007, Gareth C. Hyndman II, 452 Jordan Rd., #B, P.O. Box 33670, Phoenix, Ariz. 85067, a member of the State Bar, was suspended for 90 days and placed on probation for one year. The terms of probation include participation in the State Bar's Member Assistance Program and, if he returns to private practice during the probation period, participation in the State Bar's Law Office Management Assistance Program ("LOMAP"). Mr. Hyndman was ordered to pay restitution to the State Bar for the Ethics Enhancement Program ("EEP") enrollment fee and any other unpaid costs ordered in File No. 03-1331 and assessed the costs and expenses of the disciplinary proceedings in the amount of \$600 together with interest at the legal rate.

In count one, Mr. Hyndman failed to comply with the terms of the Order of Informal Reprimand and Probation in File No. 03-1331. Specifically he failed to attend EEP, file written quarterly reports, submit proof of payment to the complainant, make payments related to LOMAP and pay in full the costs

and expenses of the proceedings.

In count two, a bankruptcy matter, Mr. Hyndman failed to file a court-ordered motion to withdraw and other paperwork appear at two show cause hearings or timely pay contempt sanctions in the amount of \$1,000. He also failed to respond to the State Bar during its investigation.

Two aggravating factors were found: prior disciplinary offenses and pattern of misconduct.

Four mitigating factors were found: absence of a dishonest or selfish motive, personal or emotional problems, imposition of other penalties or sanctions and remorse.

Mr. Hyndman violated Rule 42, ARIZ.R.S.Ct., ERs 3.2, 3.4(c) and 8.4(d), and Rule 53(e), ARIZ.R.S.Ct.

BARRY G. NELSON

Bar No. 006746; File Nos. 05-0782, 05-1621, 05-1651, 05-1848, 05-2152, 05-2153, 05-2191, 06-0134, 06-0251, 06-0320, 06-0357

Supreme Court No. SB-07-0102-D

By Arizona Supreme Court judgment and order dated June 29, 2007, Barry G. Nelson, 12520 Broadmoor, Leawood, Kan. 66209, a suspended member of the State Bar, was suspended for six months and one day, retroactive to Mar. 14, 2006, and placed on probation for two years upon reinstatement. The terms of probation include participation in the State Bar's Law Office Management Assistance Program and Member Assistance Program. Mr. Nelson was ordered to pay restitution totaling \$11,535 and participate in fee arbitration if the client in count two so requests. He also was assessed the costs and expenses of the disciplinary proceedings in the amount of \$1,690.86, together with interest at the legal rate.

Mr. Nelson committed professional misconduct in 10 separate cases. In count one, the State Bar received three insufficient funds notices regarding Mr. Nelson's trust account resulting in an investigation by the State Bar's staff examiner. The investigation disclosed that Mr. Nelson had disbursed earned fees directly from the trust account without recording for which client the fees were earned, failed to maintain adequate client ledgers and other trust account records, failed to maintain proper internal controls

within his office to adequately safeguard client funds, failed to make all disbursements by pre-numbered check or electronic transfer and failed to make monthly three-way reconciliations. Count two was dismissed in exchange for Mr. Nelson's tender of admission and consent to discipline.

In count three Mr. Nelson failed to timely file a motion to correct the record, failed to return phone calls and failed to timely refund unearned fees to the client. In count four, a domestic-relations matter, he failed to pursue a spousal maintenance and attorney's fees issue, failed to return phone calls and failed to timely refund unearned fees to the client. In count five Mr. Nelson failed to adequately communicate with the client and failed to timely refund unearned fees to the client.

In count six, a spousal-maintenance matter, Mr. Nelson failed to perform the services for which he was retained, failed to return phone calls, and failed to timely refund unearned fees to the client. In count seven, a child support, custody, and visitation matter, he failed to file a stipulation with the court as promised, failed to return phone calls to the client and opposing counsel, failed to further work on the case, failed to withdraw from the case and failed to refund unearned fees to the client.

In count eight, a divorce matter, Mr. Nelson failed to adequately communicate with the client, and failed to timely refund unearned fees to the client. In counts nine and 10, two separate post-dissolution matters, he failed to return phone calls, failed to adequately communicate with clients, failed to diligently pursue the cases, and failed to timely refund unearned fees to the clients.

Four aggravating factors were found: prior disciplinary offenses, a pattern of misconduct, multiple offenses, and substantial experience in the practice of law.

Two mitigating factors were found: personal or emotional problems and full and free disclosure to the disciplinary board and cooperative attitude toward the proceedings.

Mr. Nelson violated Rule 42, ARIZ.R.S.Ct., ERs 1.2, 1.3, 1.4, 1.15 and 1.16(d), and Rules 43 and 44, ARIZ.R.S.Ct.

KATHY M. O'QUINN

Bar No. 021264; File No. 05-1111

Supreme Court No. SB-07-0060-D

By Arizona Supreme Court judgment and order dated May 22, 2007, Kathy M. O'Quinn, 200 E. Mitchell Dr., Suite 308, Phoenix, Ariz. 85012, a suspended member of the State Bar, was suspended for six months, to run concurrently with the suspension imposed in SB-06-0122-D, to be followed by probation, the terms and length to be determined at the time of reinstatement. As a condition of reinstatement, she must continue to participate in the State Bar's Member Assistance Program and comply with the terms of the Dec. 19, 2005, contract. She was assessed the costs and expenses of the disciplinary proceedings in the amount of \$775.30, together with interest at the legal rate.

In a personal injury matter Ms. O'Quinn failed to maintain the balance of funds owed to a third party in her trust account and failed to timely pay the third party the total amount due. Ms. O'Quinn failed to deposit a \$200 advance fee into a trust account and failed to enter into a written contingency fee agreement with the client that set out the basis for the fee and the scope of the representation. Her misconduct occurred while she was on probation for violations of trust account rules in File No. 03-1645. She also failed to cooperate with the State Bar in its investigation.

Two aggravating factors were found: prior disciplinary offenses and obstruction of the disciplinary process.

Three mitigating factors were found: personal or emotional problems, mental disability or chemical dependency, and remorse.

Ms. O'Quinn violated Rule 42, ARIZ.R.S.Ct., ERs 1.15 and 8.1(b) and 8.4(d), and Rules 43, 44, and 53(d) and (f), ARIZ.R.S.Ct.

SCOTT E. SCHLIEVERT

Bar No. 003188; File Nos. 04-1349, 04-2137, 05-1318, 06-0594

Supreme Court No. SB-07-0034-D

By Arizona Supreme Court judgment and order dated April 17, 2007, Scott W. Schlievert, 21 E. Speedway Blvd., Tucson, Ariz. 85705, a member of the State Bar, was suspended for six months and

one day and placed on probation for two years upon reinstatement. The terms of probation include participating in the State Bar's Law Office Management Assistance Program and Member Assistance Program. He also was assessed the costs and expenses of the disciplinary proceedings in the amount of \$1,024.83, together with interest at the legal rate.

In count one, a child-custody matter, Mr. Schlievert failed to reasonably return client phone calls and failed to provide requested monthly billing statements despite a provision in his fee agreement that required monthly billing statements. Upon termination of the representation and despite repeated requests from the client's new attorney, Mr. Schlievert failed to promptly surrender the client's file, resulting in the new attorney filing a motion to continue hearing.

In count two, Mr. Schlievert failed to appear for a domestic settlement conference. He then failed to file a court-ordered affidavit addressing his failure to appear at the domestic settlement conference and failed to appear for the subsequent order-to-show-cause hearing.

In count three, a family law matter, Mr. Schlievert failed to establish a visitation schedule and failed to timely return client phone calls. He also failed to timely advise his client of a hearing on an order of protection and a settlement conference resulting in the client having to appear and/or enter into negotiations *in propria persona*.

In count four, a domestic-relations matter, Mr. Schlievert failed to adequately communicate the limitations to the scope of the representation to the client. As a result, the client did not respond or appear for various events in the matter, as he reasonably believed that Mr. Schlievert would handle the entire matter. Mr. Schlievert also failed to timely refund unearned fees and failed to timely withdraw from the representation despite receiving the client's consent.

Four aggravating factors were found: prior disciplinary offenses, pattern of misconduct, multiple offenses and substantial experience in the practice of law.

One mitigating factor was found: absence of a dishonest or selfish motive.

Mr. Schlievert violated Rule 42, ARIZ.R.S.Ct., ERs 1.2, 1.3, 1.4, 1.15, 1.16(d), 3.2, 3.4(c) and 8.4(d).

BRUCE A. SHOLES

Bar No. 007793; File Nos. 03-2296, 04-0875, 05-0060

Supreme Court No. SB-07-0053-D

By Arizona Supreme Court judgment and order dated May 22, 2007, Bruce A. Sholes, P.O. Box 2640, Phoenix, Ariz. 85652, a member of the State Bar, was suspended for six months and placed on probation for two years upon reinstatement. The terms of probation will include participating in the State Bar's Law Office Management Assistance Program and attending the Trust Account Ethics Enhancement Program. He was ordered to pay restitution totaling \$6,401.44 to complainants in counts one and three of this matter and assessed the costs and expenses of the disciplinary proceedings in the amount of \$2,638.90, together with interest at the legal rate.

In count one, a personal-injury matter, Mr. Sholes failed to remit the settlement funds belonging to the client or provide an accounting of the funds upon request. In count two Mr. Sholes failed to timely deliver funds owed to a third party and failed to render an accounting of the funds owed.

In count three, a personal-injury matter, Mr. Sholes failed to adequately communicate with the client after the initial meeting and failed to enter into a written contingency fee agreement with the client. Without the client's knowledge, consent or authorization, he settled the case, signing the client's name on the settlement release and settlement check. Mr. Sholes also failed to remit the settlement funds belonging to the client in a timely manner.

Upon investigation of Mr. Sholes' trust account records it was found that he commingled personal funds with client funds, committed an overdraft, failed to maintain individual client ledgers and a complete general ledger, failed to accurately record all transactions, failed to conduct three-way reconciliations, failed to retain duplicate deposit slips, and failed to keep complete records of clients and

third parties for five years after termination of the representation.

In all counts of this matter Mr. Sholes failed to respond or cooperate with the State Bar's investigation until he retained counsel. Thereafter he submitted incomplete responses to the State Bar's requests for information.

Three aggravating factors were found: pattern of misconduct, multiple offenses and substantial experience in the practice of law. No mitigating factors were found.

Mr. Sholes violated Rule 42, ARIZ.R.S.Ct., ERs 1.2(a), 1.4, 1.5(c), 1.15(a) and (d), 8.1(b) and 8.4(c) and (d), and Rules 43(a) and (d), 44(b) and 53 (f), ARIZ.R.S.Ct.

DEAN J. WERNER

Bar No. 002004; File No. 06-0466

Supreme Court No. SB-07-0123-D

By Arizona Supreme Court judgment and order dated June 22, 2007, Dean J. Werner, 4115 East Valley Auto Dr., Suite 204, Mesa, Ariz. 85206, a member of the State Bar, was censured and placed on probation for one year. The terms of probation include participation in the State Bar's Trust Account Program and Trust Account Ethics Enhancement Program. Mr. Werner also was assessed the costs and expenses of the disciplinary proceedings in the amount of \$880, together with interest at the legal rate.

Mr. Werner self-reported an overdraft to his client trust account when he attempted to withdraw funds on the tenth day of a hold where the bank released the funds on the eleventh day. Upon investigation by the State Bar's staff examiner, it was found that on eight other instances he withdrew funds in excess of the client's trust account balance, the balances were inaccurate or the trust account entries were inaccurate. He also failed to verify funds, failed to consistently back up his computer trust account records, failed to adequately supervise employees handling his trust account, failed to maintain internal controls, failed to make timely and accurate entries, failed to perform three-way reconciliations and negligently commingled funds.

One aggravating factor was found: prior disciplinary offense, which was unrelated to trust

accounting and remote.

Four mitigating factors were found: absence of a dishonest or selfish motive, timely good-faith effort to make restitution or to rectify consequences of misconduct, full and free disclosure to discipli-

nary board or cooperative attitude toward proceedings, and character and reputation.

Mr. Werner violated Rule 42, ARIZ.R.S.Ct., ER 1.15, and Rules 43 and 44, ARIZ.R.S.Ct.

BAR COUNSEL INSIDER

"But I'm Just Pinch-Hitting..."

Bar Counsel Insider provides practical and important information to Bar members about ethics and the disciplinary process.



On the surface, it might seem so insignificant: Cover a quick criminal appearance for a friend who has a conflicting court date; field an emergency call about custody from the domestic-relations client of your suite-mate who is on vacation; sign a pleading for the solo in the next-door office who got stuck in traffic but has a filing deadline in a civil case.

But in each situation, did you think about the implications of your conduct? You now have appeared in court on behalf of a criminal defendant; given legal advice to a party in a DR case; and signed *your* name to a pleading in a civil dispute.

Whoa, you might say; they're not *my* clients. You didn't charge your friend, suite-mate or neighbor for helping out, and, besides, you don't have any kind of legal-services agreement with the three clients.

In short, you were just pinch-hitting for another attorney. Doesn't that get you off the hook?

No. You have, in each case, provided legal services to a client. You appeared in court for the criminal client; you gave legal advice to the DR client about custody issues; and you signed a document that was then filed in a civil matter.

An attorney-client relationship "does not require the payment of a fee but may be implied from the parties' conduct. The relationship is proved by showing that the party sought and received advice and assistance from the attorney in matters pertinent to the legal profession." *In re Petrie*, 742 P.2d 796 (Ariz. 1987). With your agreement, your friend, suite-mate or neighbor then pulled you into the representation, and you provided legal services to the client in each case.

Did you check your conflicts system before you provided those legal services? In the criminal case, you might already represent the victim on another charge. In the DR case, you might represent the other spouse's new live-in partner. And in the civil case, you might represent one of the adversaries in other matters.

Once you appeared, advised and signed, did you then enter the names of those people into your conflicts system? Imagine this: You sign that pleading for the solo in the next-door office, not paying any attention to the parties involved. Several months later, after your next-door neighbor has relocated, you get a new client. Once you're well into that new client's litigation case, you're taken aback to find your name on the adversary's pleading—the pleading you signed, without much thought, for your now-former next-door neighbor. You'll have an awkward conversation with your client and possibly face a motion to disqualify.

Remember: The road to hell is paved with good intentions. Though you might have been extending courtesies with the best of intentions, there is nothing insignificant about appearing in court, giving legal advice or signing pleadings, and certainly nothing insignificant about the possible conflicts that may arise from doing so.

Contact the State Bar's Ethics Hotline at (602) 340-7284.